

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition for Forbearance from the
Current Pricing Rules for the Unbundled
Network Element Platform

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WC Docket No. 03-157

OPPOSITION OF THE PACE COALITION

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OPPOSITION OF THE PACE COALITION

The Promoting Active Competition Everywhere (“PACE”) Coalition, through counsel, hereby files its comments in the above-referenced proceeding in response to the Commission’s July 1, 2003 Public Notice, DA 03-2189.

I. INTRODUCTION AND SUMMARY

The PACE Coalition is composed of 18 competitive local exchange carriers (“CLECs”) that provide a variety of telecommunications services to business and residential consumers throughout the country.¹ Each of the PACE Coalition companies offers a form of bundled local exchange and long distance services, among other services. In providing their services to residential and small business customers, PACE Coalition carriers utilize in various degrees the combination of unbundled network elements (“UNEs”) commonly referred to as UNE-P. Because the relief requested in Verizon’s self-styled forbearance petition² would have a

¹ PACE Coalition members include: ACCESS Integrated Networks, Inc.; ATX Communications, Inc.; Birch Telecom; BizOnline.com, Inc. d/b/a Veranet Solutions; BridgeCom; DataNet Systems; DSCI Corp.; Ernest Communications; IDS Telcom LLC; InfoHighway Communications; ITC^DeltaCom, Inc.; Granite Telecommunications; MCG Capital Corporation; MetTel; Microtech-Tel; Momentum Business Solutions Inc.; nii communications; Sage Telecom, Inc.; and Z-Tel Communications, Inc.

² Although Verizon styles its Petition as one for forbearance pursuant to the filing requirements of section 10 of the Communications Act, 47 U.S.C. § 160, Verizon’s Petition fails to comport with section 1.53 of the Commission’s rules, 47 C.F.R. § 1.53. As a result, the Commission is under no obligation to address Verizon’s Petition within the time frames established by section 10.

material adverse affect on carriers that utilize UNE-P, PACE Coalition members have a strong interest in this proceeding.

In its Petition, Verizon seeks wholesale changes to the Commission's pricing rules for UNE-P. Specifically, Verizon requests that the Commission: (1) "immediately forbear from its decision permitting UNE-P carriers to collect per-minute access charges from long distance carriers" ("Access Charge Request") and (2) "forbear from applying its current TELRIC pricing rules to the UNE platform" ("TELRIC Request").³ The Commission should reject both requests.

Verizon's Access Charge Request, which apparently seeks to eliminate the ability of UNE-P carriers to impose access charges, is not even a request for forbearance. Rather, it is a request for a brand new rule – a rule that would empower Verizon to collect access charges on UNE-P lines, even though CLECs are the providers of exchange access over such lines. Forbearance relief comes in the form of a Commission determination to cease enforcing an existing rule or statutory provision, not promulgating an entirely brand new rule, as Verizon's Access Charge Request would require. Thus, Verizon is not even in the right ballpark with its Access Charge Request.

Verizon's request from relief from the TELRIC pricing rules for UNE-P fails under any reasonable section 10 analysis. First, grant of Verizon's TELRIC request is expressly barred by section 10(d) of the Act, which statutorily precludes the Commission from forbearing from the requirements of sections 251(c) and 271.⁴ Moreover and in any event, Verizon's effort to justify its TELRIC Request fails to satisfy each of the three prongs of the statute's forbearance standard. Indeed, grant of Verizon's Petition would: (1) result in discriminatory pricing for

³ Verizon Petition, 1.

⁴ 47 U.S.C. § 160(d).

UNEs and unjust and unreasonable pricing by the BOCs; (2) harm consumers; and (3) correspondingly harm the public interest. Accordingly, the Commission should reject Verizon's TELRIC Request.

Finally, the PACE Coalition notes that, fundamentally, a forbearance proceeding is inappropriate for the types of global rule changes that Verizon seeks. Rather, to the extent that Verizon, the Commission, or any other party wishes to offer changes to the Commission's Supreme Court-affirmed, cost-based pricing methodology, the appropriate procedural vehicle is a rulemaking proceeding, not a ram-rod forbearance petition.⁵

II. VERIZON'S "ACCESS CHARGE" REQUEST SEEKS ESTABLISHMENT OF A NEW RULE, NOT FORBEARANCE, AND THEREFORE CANNOT BE CONSIDERED UNDER SECTION 10

Section 10 provides that the Commission "shall forbear from *applying any regulation or any provision*" of the Act if the Commission determines that: (a) enforcement is not necessary to ensure rates are just, reasonable, and nondiscriminatory; (b) enforcement is not necessary for the protection of consumers; and (c) forbearance from applying the provision or regulation is not necessary to protect the public interest.⁶ In other words, to forbear is to "refrain from action."⁷ That is, upon grant of a petition for forbearance, the subject regulation/provision is stripped away, and the pre-existing state of affairs – the *status quo ante* – applies.

Rather than seek a return to the *status quo ante*, Verizon seeks a brand new rule – namely a rule that makes Verizon the collector of per-minute access charges.⁸ The fundamental

⁵ Indeed, the Commission is planning to initiate a rulemaking proceeding to address issues surrounding future application of the TELRIC pricing methodology.

⁶ *Id.* § 160(a) (emphasis added).

⁷ BLACK'S LAW DICTIONARY 644 (6th ed. 1991).

⁸ Verizon does not expressly state that it should be the collector of access charges for access services provided over UNE-P lines, but that appears to be its intent. The plain language of the statute and the Commission's original (and still effective) implementing

problem with Verizon's request for relief (aside from the fact that Verizon does not articulate the regulations or statutory provision from which it seeks relief) is that there simply is no other rule that would otherwise exist in the absence of the rule from which Verizon seeks forbearance.

In support of its request, Verizon alleges that TELRIC pricing "diverts access charge revenues that were designed to support the network infrastructure and simply adds to the uneconomic arbitrage opportunity available to UNE-P carriers."⁹ This is flat wrong. Sections 251(c)(2) and 251(c)(3) empower CLECs to provide exchange access service over UNEs, including UNE combinations like UNE-P, and this finding is codified in the FCC's rules,¹⁰ and has been so codified since 1996. Even if forbearance were possible, no alternative rule would exist that would permit Verizon to be considered the "provider of access" over UNE-P lines. Such a finding would require a new rule, and creating new affirmative rules simply is not possible through forbearance.¹¹

Aside from a brief, long-expired transition rule,¹² Verizon has never been permitted to collect access charges on UNEs, nor has Verizon ever been considered the exchange access provider over UNEs. As even Verizon concedes, the Commission determined seven years

rules expressly conclude that CLECs may provide exchange access over UNEs. Issuance of such a new rule would require elimination of numerous Commission regulations that go unmentioned in Verizon's Petition, including sections 51.309(a)-(c), 51.311(a)-(b), 51.313, and 51.515, 47 C.F.R., §§ 51.309(a)-(c), 51.311(a)-(b), 51.313, 51.515.

⁹ Verizon Petition, 4.

¹⁰ 47 C.F.R., § 51.309(b) ("A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access service to itself in order to provide interexchange services to subscribers.").

¹¹ Moreover, even if the Commission were to consider promulgating such a new rule, other issues must be addressed. Foremost, any such rule would foreclose a CLEC's ability to provide the services that it seeks to offer, and the resulting revenue stream diversion would be confiscatory. Moreover, such a result would further subsidize ILEC operations by creating an express subsidy in violation of the Act's direction to eliminate both explicit and implicit subsidies.

¹² See *id.*, §§ 51.515(b)-(c).

ago that permitting BOCs to collect access charges on UNEs violates the cost-based pricing standard of the Act. As the FCC noted, “if we were to require ... carriers purchasing unbundled network elements to also pay access charges, then incumbent LECs would receive compensation in excess of their underlying network costs. This result would be inconsistent with the pricing standard for unbundled elements set forth in section 252(d)(1).”¹³ Thus, grant of Verizon’s petition would violate section 252(d)(1) of the Act, which is incorporated by reference in section 251(c)(3) of the Act. The Commission simply lacks authority to forbear from enforcing section 251(c) at present; therefore, even if the Commission determined that it would consider Verizon’s request for a new affirmative rule in a forbearance context, the relief request by Verizon is barred by statute.¹⁴

III. VERIZON’S TELRIC REQUEST FAILS TO SATISFY THE CRITERIA OF SECTION 10 OF THE ACT

Verizon’s TELRIC request utterly fails to meet section 10’s standard for forbearance as articulated in various Commission orders. Although the Commission is “required under Section 10 to grant petitions for forbearance when [it is] able to make the requisite finding,” Verizon “must support such requests with more than broad, unsupported allegations in order for [the Commission] to exercise that statutory authority.”¹⁵ As demonstrated below, Verizon’s Petition merely presents “broad, unsupported allegations” that are patently insufficient to support a request for forbearance, and thus the Commission should reject the Petition.

¹³ *Local Competition First Report and Order*, ¶ 363.

¹⁴ Indeed, aside from the infirmities already mentioned, Verizon’s Access Charge Request would fail any reasonable application of section 10’s criteria for essentially the same reasons that its TELRIC request fails. *See infra*, section III.

¹⁵ *Hyperion Telecommunications, Inc. Petition Requesting Forbearance; Time Warner Communications Petition for Forbearance; Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 8596, ¶ 21 (1997).

A. Section 10(d) Of The Act Precludes Verizon's TELRIC Request

As a threshold matter, Verizon's TELRIC request is impermissible under section 10(d) of the Act, which precludes the Commission from forbearing from sections 251(c) and 271 until such time as these provisions are fully implemented. Sections 251(c) and 271 simply require UNEs and UNE combinations, including UNE-P. Indeed, as the FCC recently stated on August 7, 2003:

The Telecommunications Act of 1996 (1996 Act) contemplated three vehicles for competitors to enter local telephone service markets. First, CLECs may resell the services of incumbent local exchange carriers (ILECs). Second, **CLECs may make use of ILEC facilities, for example, by leasing ILEC unbundled network element (UNE) loops to use in combination with the CLECs' own switching capabilities, or by leasing the UNE-platform that combines the ILEC loop with ILEC switching services.** Third, CLECs may build the complete set of facilities they need to compete. Individual competitors have used various combinations of these methods at different times.¹⁶

Notwithstanding Verizon's weathered and long-rejected arguments to the contrary, UNE-P is not resale.¹⁷ In any event, with regard to section 10(d), and as described below, neither section 251(c) nor section 271 has been "fully implemented." Accordingly, Verizon's forbearance request is barred by statute.

1. Because section 251(c)(3) has not been fully implemented, grant of Verizon's TELRIC Request is barred by statute

Section 251(c)(3) requires Verizon to provide nondiscriminatory access to network elements. Proceedings on the meaning of this provision have been on-going for seven years, and therefore there can be no doubt that section 251(c)(3) is far from "fully implemented." Indeed, the whole purpose of the Commission's impending *Triennial Review Order* is to address

¹⁶ Trends in Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau, 8-1 (rel. Aug. 7, 2003) (emphasis added). NECA similarly recognizes that UNE-P providers are entitled to access charges.

¹⁷ See, e.g., Verizon Petition at ii, 16.

implementation of section 251(c)(3) (including issues related to TELRIC). After that order is issued, the state commissions will need to conduct implementation proceedings, which will take the better part of a year to complete. Moreover, there is little doubt that the *Triennial Review Order* and the subsequent state commission rulings will be the subject of numerous court appeals. Thus, the “requirements” of section 251(c)(3) are nowhere close to being “fully implemented.”

Verizon’s effort to skirt -- in a footnote -- the plain fact that the relief it seeks is precluded by the statute’s limit on the ability to forbear from section 251(c)(3) is unavailing.¹⁸ Section 252’s pricing standard, which has never been defined as anything but TELRIC, is expressly incorporated into section 251(c)(3), which requires rates to be “just, reasonable, and nondiscriminatory” and “in accordance with” the requirements of “section 252.”¹⁹ Any effort to forbear from applying the Commission’s existing TELRIC pricing rules would impermissibly allow Verizon “to sideslip [section] 251(c)’s requirements,” and such a result would simply not withstand judicial review.²⁰

2. Because section 271 has not been fully implemented, grant of Verizon’s TELRIC Request is barred by statute

Section 10(d) similarly requires an affirmative finding by the Commission that section 271 has been “fully implemented” before the Commission can consider forbearance from any of section 271’s provisions. Although BOCs have been deemed in compliance with the requirements of section 271 in many states, neither the FCC nor any state commission has found

¹⁸ Verizon Petition, n.38 (asserting that the Commission’s pricing rules are not part of either section 251(c) or 271).

¹⁹ 47 U.S.C. § 251(c)(3).

²⁰ *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 666 (2001) (vacating the FCC’s effort to use separate affiliates to limit section 251(c)(3) unbundling obligations).

that section 271 has been “fully implemented.” Indeed, many states have on-going section 271 compliance proceedings, and the BOCs are subject to a variety of on-going “performance assurance plans,” under which they pay millions of dollars per month in fines and credits for failing to provide performance consistent with the section 271 competitive checklist.

The section 271 competitive checklist expressly requires the BOCs to provide the loop, switching, and transport network elements that are fundamental to UNE-P. Verizon’s lament that “nothing in the Act says a word about the UNE-P. Rather, the UNE-P is a regulatory construct devised by the Commission”²¹ is just more of its tired, hackneyed advocacy. The fact of the matter is that the Commission’s interpretation of section 251(c)(3) – upheld by the Supreme Court²² -- requires the BOCs to provide a series of network elements in combination at TELRIC rates, and certain of these elements when combined comprise what has become known as “UNE-P.” Thus, UNE-P is required by checklist item ii,²³ and moreover, each of the constituent network elements is required by checklist items iv through vi.²⁴

Section 271’s obligations simply do not evaporate upon a finding that a BOC has complied with the checklist in an in-region InterLATA entry proceeding. In Verizon’s fantasy world, by contrast, immediately upon complying with the checklist a BOC’s checklist obligations cease to exist. That would result in a situation where CLECs could not file backsliding complaints under section 271(d)(6), as there is simply no way to enforce an obligation that no longer exists. Such a result defies rudimentary logic. Indeed, “a determination” consistent with Verizon’s view would “effectively eviscerate section 271 and

²¹ Verizon Petition, 13.

²² *Iowa Utils. Bd. v. FCC*, 525 U.S. 366 (1999).

²³ 47 U.S.C. § 271(c)(2)(B)(ii).

²⁴ *Id.*, §§ 271(c)(2)(B)(iv)-(vi).

circumvent the procompetitive incentives for opening the local market that Congress sought to achieve through that section of the Act.”²⁵ Accordingly, the Commission should summarily reject this absurd Verizon request.

B. Verizon’s Petition Is Contrary To The Standard Set Forth In 10(a) Of The Act

Even if Verizon’s TELRIC Request can hurdle section 10(d)’s proscriptions on forbearance, Verizon’s petition fails to satisfy the statute’s section 10(a) forbearance criteria.

Pursuant to section 10(a):

[T]he Commission shall forbear from applying any regulation or any provision of th[e] Act to a telecommunications carrier...in any or some of its...geographic markets, if the Commission determines that (a) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier...are just and reasonable and are not unjustly or unreasonably discriminatory; (b) enforcement of such regulation or provision is not necessary for the protection of consumers; and (c) forbearance from applying such provision or regulation is consistent with the public interest.²⁶

Under this standard, as explained below, the Commission is compelled to reject Verizon’s Petition.

²⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services; Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services; Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology; Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act; Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996; Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. Sec. 160 for ADSL Infrastructure and Service, Memorandum Opinion and Order, And Notice of Proposed Rulemaking, 13 FCC Rcd. 24011, ¶ 12 (1998).*

²⁶ 47 U.S.C. § 160 (emphasis added).

1. Continued TELRIC pricing for UNE-P is necessary to prevent anticompetitive and discriminatory harm to telecommunications carriers

Under the Commission's existing UNE pricing rules, a BOC must charge the state commission-set TELRIC rate for UNEs "unless the different rates could be justified by the costs incurred by the incumbent LEC."²⁷ Indeed, the Commission expressly has found that "regulations permitting non-cost based discriminatory treatment are prohibited by the 1996 Act."²⁸ Moreover, the Act's cost-based pricing standard and prohibition against non-cost based price discrimination for UNEs is codified in checklist item ii of the section 271 checklist, which mandates that a BOC provide "*nondiscriminatory* access to network elements in accordance with the *cost-based* pricing standard of section 252(d)(1)."²⁹

Put another way, only in cases where a BOC demonstrates that its forward-looking cost of providing a UNE to a specific CLEC is different from the cost of providing that same UNE to other CLECs may a BOC assess a different rate. The TELRIC cost of a BOC's provision of UNEs to all CLECs is presumptively the same, and the BOC bears the burden of demonstrating that its cost of providing UNEs to different CLECs varies. However, Verizon has failed to provide any evidence that the cost it incurs providing elements in the UNE-P configuration is any different than providing stand-alone UNEs. The reason for this is simple: Verizon's cost of providing a loop is the same regardless of whether or not the unbundled loop is combined with an unbundled switch port.³⁰

²⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15400, ¶ 861 (1996) (subsequent history omitted) ("Local Competition Order").

²⁸ *Id.*, ¶ 862.

²⁹ 47 U.S.C. § 271(c)(2)(B)(ii) (emphasis added).

³⁰ Indeed, if anything, the manual labor involved with providing a stand-alone loop makes provisioning such loops more expensive than loops provisioned as part of UNE-P.

Grant of Verizon's petition would change this bedrock principle of cost-based pricing by permitting price discrimination among carrier purchasers of UNEs, depending upon whether or not a carrier utilizes UNEs in a "platform" combination. Stand-alone UNEs would be priced at TELRIC, whereas UNE-P combinations would be priced at some other undisclosed rate.

Moreover, the grounds on which Verizon attempts to justify its proposal for price discrimination are groundless. For example, Verizon claims without support that "the current TELRIC pricing rules also have caused CLECs to curtail the use of their existing facilities in favor of the UNE Platform and artificially low rates."³¹ This assertion is just another Verizon myth. As noted in the attached *UNE-P Fact Report*, Commission data on local competition demonstrates that CLECs engaged in UNE-Loop or pure facilities strategies have increased their competitive market share from 1999 to 2002.³² Specifically, Commission data shows that as of December 1999, competitors deploying UNE-Loop and pure facilities strategies accounted for 39% of all competitive lines.³³ By December 2002, competitors deploying UNE-Loop and pure facilities strategies accounted for 47% of all competitive lines.³⁴ Verizon just does not have the facts straight.

2. Continued TELRIC pricing for UNE-P is necessary to protect the interests of telecommunications consumers

Verizon asserts that "applying the current pricing rules to UNE-P is not necessary to protect consumers."³⁵ This is plain wrong. FCC data shows that approximately 12.75 million

³¹ Verizon Petition, 9.

³² *UNE-P Fact Report: July 2003*, 2 (attached hereto at Tab A).

³³ *Id.*

³⁴ *Id.*

³⁵ Verizon Petition, 20.

lines are served by UNE-P. In response to UNE-P competition, the BOCs have lowered their residential and small business rates dramatically and rolled out new service offerings to match the prices and packages offered by UNE-P competitors. The net result is that consumers nationwide – both CLEC and BOC customers – have benefited dramatically from UNE-P competition. In areas where UNE-P competition is scant to non-existent – such as the “Lost Verizon” (former GTE) – consumer choice lags behind the rest of nation.

Verizon also claims, without support, that UNE-P carriers are “selectively focusing on attractive urban and business customers.”³⁶ This assertion is false. UNE-P is the broadest and deepest form of competition. Whereas UNE-Loop competition is focused on urban and business customers, UNE-P competition is pervasive, both in terms of geographic area and class of customer served. As one of many examples, following is recent data from Georgia:

Comparing the Competitive Profile of UNE-P and UNE-L – Georgia 2002³⁷

Wire Center Ranking	Average Lines/CO	Competitive Penetration	
		UNE-L	UNE-P
The 25 Largest Wire Centers	67,977	3%	6%
Next 25 Largest Wire Centers	40,012	2%	9%
Next 25 Largest Wire Centers	26,616	1%	8%
Next 25 Largest Wire Centers	13,542	0%	8%
Next 25 Largest Wire Centers	6,943	0%	6%
Next 25 Largest Wire Centers	3,875	0%	7%
Smallest 28 Wire Centers	1,697	0%	6%

³⁶ Verizon Petition, 4.

³⁷ Georgia Public Service Commission, Docket No. 14361-U Generic Proceeding To Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.’s Network, BellSouth Response to Request No. 1, Access Integrated Networks First Set of Data Requests to BellSouth (2002).

In short, in states where robust UNE-P competition exists, competition can be found even in the most rural areas of a state.³⁸ Grant of Verizon's Petition would undo those benefits – some of which come in the form of competitive BOC pricing packages -- increasing the phone bills and constricting the competitive choices of all consumers in areas served by UNE-P.

UNE-P has provided great consumer benefits, despite the anticompetitive restraints that Verizon and other ILECs have undertaken over the last seven years to make large segments of ILEC lines ineligible for conversion to UNE-P. For example, BOCs will not provide DSL service to end users that seek local voice service from UNE-P carriers. As a result, DSL has become a BOC customer retention tool. Any increase in UNE prices similarly would limit the addressable market of UNE-P providers.

3. Elimination of TELRIC Pricing for UNE-P would directly contravene the public interest

Regarding section 10's public interest prong, the statute directs the Commission "to consider whether forbearance will promote competitive market conditions, including whether it will enhance competition among existing telecommunications providers."³⁹ In addition, "a determination that forbearance will promote competition may be the basis for a finding that forbearance is in the public interest."⁴⁰

³⁸ *UNE-P Fact Report: July 2003*, 2-3. PACE Coalition members bring broad and deep competition throughout much of the nation, consistent with this. As one example, Sage Telecom's customer base is 94% residential, and about 75% of Sage Telecom's customers are located in rural and suburban areas (typically UNE rate zones 2 and 3).

³⁹ *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, First Report and Order, 15 FCC Rcd 17414, ¶4 (2000). Indeed, the "competitive effect" underpinning the section 10(a)'s public interest prong is essentially similar to any analysis that the Commission would conduct under section 10(b), and the Commission should reject Verizon's Petition under either or both provisions.

⁴⁰ *Id.*

Verizon wrongfully alleges that “the application of TELRIC to UNE-P has unquestionably contributed to a massive decline in telecommunications industry investment, directly contravening the core goal of the 1996 Act.”⁴¹ This is a patently ridiculous assertion for which Verizon offers no evidence. In fact, the emergence of UNE-P competition has to date been the single greatest consumer benefit resulting from the 1996 Act. UNE-P is the fastest growing form of local competition, serving an estimated 12.75 million residential and small business lines by the end of the second quarter of 2003.

Moreover, UNE-P has not harmed Verizon, as one look at Verizon’s financial statements amply demonstrates. Despite the alleged horror of UNE-P competition, Verizon and the other BOCs continue to earn record profits. In 2002 – despite a recession that transcended industries and economies – Verizon earned **\$4.8 billion in free cash flow**. That is, after paying everyone – Ivan Seidenberg, lawyers, country clubs, and the IRS – Verizon had **\$4.8 billion** in cold, hard cash left over. Moreover, even though UNE-P competition continues to grow, the BOCs continue to tell Wall Street that they will meet all financial expectations. At worst, UNE-P competition forces the BOCs to keep their retail prices down, preventing them from obscenely overearning.

IV. MODIFICATION OF THE COMMISSION’S PRICING RULES IS BEST DONE THROUGH A RULEMAKING PROCEEDING RATHER THAN A FORBEARANCE PROCEEDING

As demonstrated above, Verizon’s Petition for Forbearance falls far short of the requirements of section 10. The PACE Coalition does recognize, however, that the Commission’s cost-based pricing methodology, like all regulations, may need modification over time. The appropriate procedural vehicle for such an inquiry, however, is not a forbearance

⁴¹ Verizon Petition, 6.

petition. Rather, parties seeking such changes, including the Commission, should pursue a notice and comment rulemaking proceeding to develop a proper record for such an important consideration.

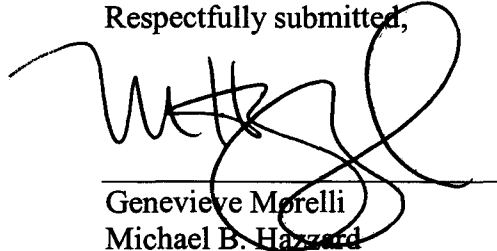
Toward that end, the PACE Coalition supports the August 8, 2003 CompTel letter to the Commission. In its letter CompTel voices its support for a “robust inquiry into TELRIC to develop the type of detailed evidentiary record necessary to determine whether changes to the TELRIC regime are necessary.”⁴² Anything less would be insufficient for the Commission to determine whether and to what extent the existing TELRIC methodology needs to be modified since it was first promulgated in 1996.

⁴² Letter from CompTel President H. Russell Frisby, Jr. to Chairman Michael K. Powell re: Notice of Proposed Rulemaking on TELRIC (Aug. 8, 2001) (attached hereto at Tab B).

V. CONCLUSION

Consistent with the foregoing, the Commission should deny Verizon's Petition, and should instead establish a rulemaking proceeding to the extent it may be necessary to review and possibly modify the Commission's existing TELRIC pricing rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Genevieve Morelli', is written over a horizontal line.

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TAB A



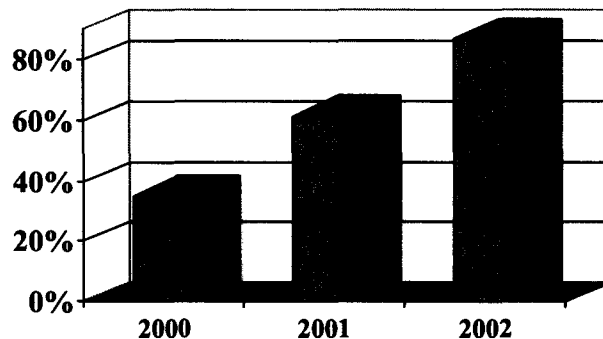
The UNE-P Fact Report: July 2003¹

This is the third in a series of reports tracking the progress of the unbundled network element platform (UNE-P) in transforming local telephone markets from monopoly to competition. The UNE-P Fact Report is based on hard data filed by the incumbent local exchange carriers with federal and state regulators, as well as statements released to investors, and is intended to provide an objective summary of the status of UNE-P based competition.

UNE-P Remains the Fastest Growing Form of Local Competition

Market data confirms that UNE-P remains the fastest growing form of local competition, serving an estimated 12.75 million residential and small business lines by the end of the second quarter of 2003. UNE-P is unmistakably the principal driver of competitive growth in the local market, accounting for more than 85% of the net growth in competitive access lines last year (2002).

**Percentage of CLEC Growth
Attributable to UNE-P**



The Growth of UNE-P (in lines)

0.49 million
December 1999

1.62 million
June 2000

2.84 million
December 2000

4.76 million
June 2001

5.78 million
December 2001

7.48 million
June 2002

10.23 million
December 2002

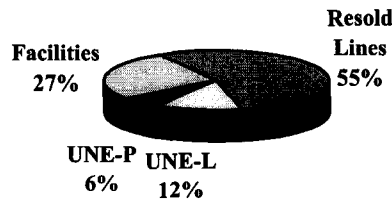
12.75 million
June 2003 est.

¹ The UNE-P Fact Report is published twice annually by the PACE (Promoting Active Competition Everywhere) Coalition. Previous versions of the UNE-P Fact Report may be downloaded at www.pacecoalition.org. The PACE Coalition consists of smaller entrants that use UNE-P to provide some or all of their local services. The members of the PACE Coalition are: Access Integrated Networks, ATX Communications, Birch Telecom, BiznessOnline.com, BridgeCom, DSCI Corporation, Ernest Communications, Granite Telecommunications, IDS Telcom, InfoHighway Communications, ITC^DeltaCom, MCG Capital Corp., MetTel, MicroTech-Tel, Momentum Business Solutions, nii communications, TruComm, and Z-Tel Communications.

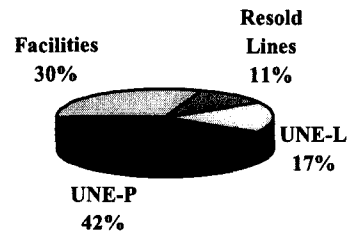
UNE-P Complements Other Forms of Facilities-Based Competition

The rapid growth in UNE-P (particularly relative to other entry strategies) is occurring because the strategy is uniquely suited to bring competitive services to the mass market (i.e., customers served by traditional analog phone lines). Other approaches, such as UNE-L, are better suited to serving higher-speed digital customers. Because UNE-P and UNE-L are used to

Entry Mix: December 1999



Entry Mix: December 2002

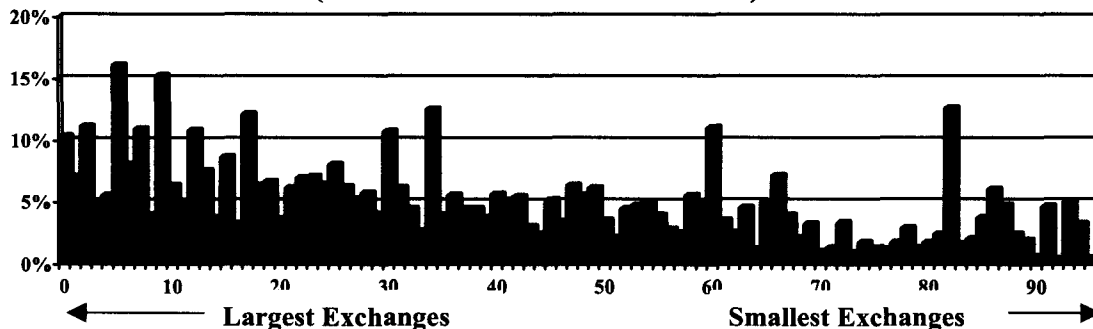


serve different customer segments, both have seen their share of the competitive pie increase. For instance, since the FCC has been tracking CLEC entry, UNE-P has grown from only 6% of CLEC lines at the end of 1999 to more than 40% by June of 2002. Although UNE-P is now the dominant local entry strategy (at 42%), its gain has *not* occurred at the expense of either UNE-L or purely facilities-based strategies. Rather, each of the approaches address different customer segments, and therefore grow independently of one another.

UNE-P Extends Competition From Urban to Rural Markets

As noted above, what sets UNE-P apart from other entry strategies is that only UNE-P can bring competition to the mass market of residential and small business customers that are principally interested in voice services utilizing traditional analog lines. Significantly, these customers are dispersed throughout each state.² The bar chart below compares UNE-P's

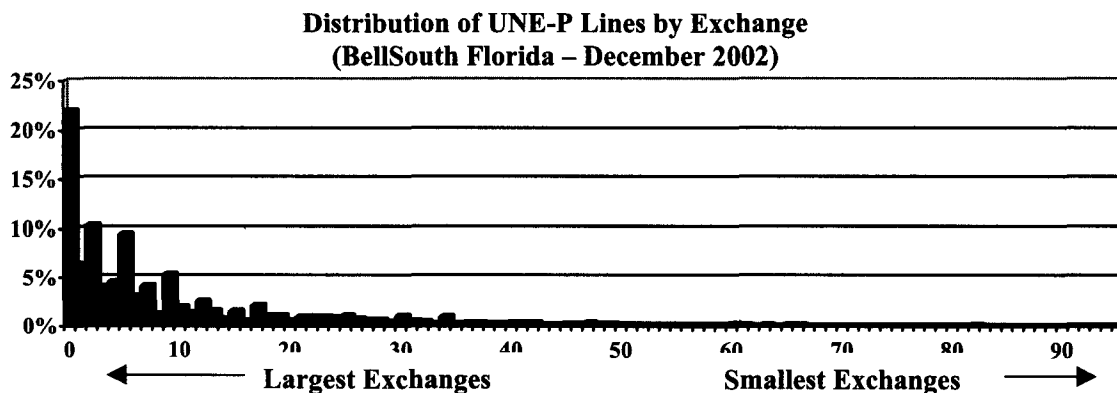
**UNE-P Market Share by Exchange
(BellSouth Florida – December 2002)**



² Prior versions of the UNE-P Fact Report (August 2002 and January 2003) provide additional discussion of UNE-P's focus on the analog customer, as well as evidence of UNE-P's ability to bring competition broadly to this market.

market share in each of BellSouth's 96 Florida exchanges, ranked by the size (measured in access lines) of the exchange. BellSouth's largest exchange (Miami, with over 1 million lines) is on the left, its smallest exchange (Munson, 632 lines) is on the right, and the remaining exchanges are arranged in between according to size. As the chart clearly shows, UNE-P is bringing competition to *every* exchange in Florida, exhibiting a competitive profile unmatched by any other approach.³

Importantly, however, it is impossible to separate UNE-P's ability to extend competition to smaller exchanges from its ability to serve the mass market in urban areas as well. Although the figure above demonstrated that UNE-P *extends* competition throughout Florida, most UNE-P lines are in *urban* exchanges (because such exchanges comprise such a large portion of the underlying market). The frequency distribution below (measuring the percentage of UNE-P lines in each exchange) demonstrates the dependency of rural competition on urban entry.

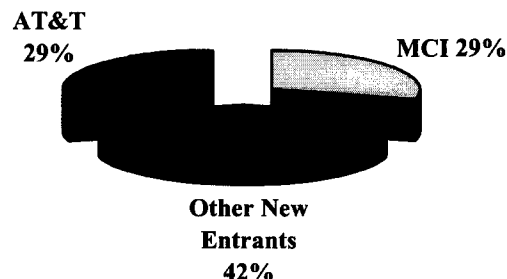


The important point illustrated by the figures above is that the highly dispersed nature of the mass market is addressable by UNE-P. Only if the strategy is able to achieve critical mass in urban areas, however, can it incrementally extend competition to less dense markets. If given the opportunity to extend competitive choice, the evidence suggests that the competitive profile of UNE-P will conform to that of the underlying market, extending competition throughout a state.

UNE-P Remains Critical to New Entry

One of the benefits of UNE-P is that it extends local competition to an important (yet forgotten) customer segment: the mass market. In addition to reaching a new customer segment, UNE-P is also providing an entry path for a new layer of competitive entrant, the innovative small carrier. Although the traditional long distance companies (AT&T and MCI) are large individual

The Distribution of UNE-P (1Q03est)



³ An analysis comparing the competitive profile of UNE-P and UNE-L in Texas similarly demonstrated that UNE-P extends competition more broadly than other strategies. See *UNE-P Fact Report, August 2002*.

competitors, the largest carrier segment using UNE-P are new entrants, including the carriers that together form the PACE Coalition (sponsor of the UNE-P Fact Report). Although less well known than AT&T and MCI, this “second tier” of competitive entrants represent the largest (collective) purchaser of UNE-P, serving nearly 5 million lines. It is within this tier that new competitive ideas are first tested and innovation is most likely to develop. Because innovation frequently begins with the most recent entrant, it is important that entry barriers remain low (as Congress intended by the 1996 Act).

The Benefits of UNE-P Are Becoming More Widespread

One significant trend is that the benefits of UNE-P based competition are becoming less concentrated. In December 2001, approximately 72% of the UNE-P lines were concentrated in the top 5 states; one year later, the top 5 states represented only 58% of the nation’s UNE-P lines. As shown in the table to the right, the competitive benefits from UNE-P are becoming more diffused, with the distribution of UNE-P lines becoming more widespread across the nation.

**The Distribution of UNE-P Competition
Shows Benefits Becoming More Dispersed**

	Dec 2001	Dec 2002
Top 2 States	54%	35%
Next 3 States	18%	23%
States 6 to 10	11%	21%
States 11 to 15	6%	11%
States 16 to 25	6%	7%
Remaining States	4%	4%
Total	100%	100%

This trend is partially frustrated, however, by the lack of competitive progress in the Qwest region, the only region where UNE-P growth has been negative over the past year. The

Growth of UNE-P by RBOC Region

	2Q02	3Q02	4Q02	1Q03	Average Growth
BellSouth	1,118.0	1,359	1,545	1,774	19.6%
Qwest	512.0	498	490	503	-0.6%
SBC	3,453.0	4,204	5,014	5,784	22.5%
Verizon	2,398.0	2,716	3,186	3,572	16.3%
Total	7,481.0	8,777	10,243	11,633	18.5%

slow-to-negative growth in the Qwest region, however, does *not* appear to be the result of the rural character of some of the Qwest states. In fact, the competitive share achieved by UNE-P in the three smallest Qwest states (Wyoming, South Dakota and North

Dakota) is significantly greater than UNE-P’s competitive share in Qwest’s three largest states (Arizona, Colorado and Washington).⁴

The “Lost Verizon”

For the first time, data on UNE-P penetration in the Verizon territory formerly served by GTE is publicly available. The January 2003 UNE-P Fact Report commented on the widely disparate levels of competitive activity between the territories served by the Regional Bell Operating Companies (which are subject to Section 271), and the levels of competition in the exchanges of those companies previously served by GTE and SNET. The state-level data

⁴ UNE-P’s share in Wyoming, South Dakota and North Dakota is 9.6%, 6.0% and 8.7% respectively, while its share in Arizona, Colorado and Washington is 1.5%, 2.8% and 2.3%.

previously withheld by Verizon-GTE confirms that competition in these markets dramatically lags competitive development in other, similarly sized states.⁵

Contrasting Verizon-GTE Territories to Similarly Sized RBOC States

Verizon-GTE States			Comparable RBOC States		
State	GTE Lines	UNE-P Share	State	RBOC Lines	UNE-P Share
California	4,567,288	0.04%	Pennsylvania	5,202,704	6.44%
			Michigan	4,216,623	17.56%
Florida	2,269,402	0.17%	Missouri	2,302,419	6.58%
			North Carolina	2,302,280	4.42%
			Louisiana	2,167,973	4.64%
			Indiana	2,127,833	4.03%
Texas	1,647,656	0.40%	Wisconsin	1,879,847	3.96%
			Alabama	1,775,012	5.68%
			Oklahoma	1,428,957	5.14%
Indiana Ohio	996,488	0.03%	Kansas	1,053,069	14.83%
	954,398	0.09%	Utah	998,754	1.50%
			Iowa	963,547	6.89%
			Arkansas	874,852	8.60%

As the above table illustrates, mass market competition in the territories served by Verizon-GTE trails that developing in the areas served by Regional Bell Operating Companies. Even though these "GTE" territories are now part of Verizon, consumers in the legacy GTE exchanges are not benefiting from competition in the same way as consumers in legacy Bell Atlantic exchanges. This not only harms consumers in the Verizon-GTE exchanges, but it also reduces the effective overall market in the state as a whole. For instance, in Indiana, competitive barriers in the Verizon-GTE exchanges reduce the overall market by nearly 1/3rd.⁶ Thus, the absence of competitive opportunity in the Verizon-GTE territory not only harms consumers in its exchanges, it collaterally harms other consumers in the exchanges of others as well.

For questions concerning the PACE Coalition or the UNE-P Fact Report, please contact:

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-or-

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⁵ The table is limited to only the largest Verizon-GTE states, i.e. those states with more than 900,000 access lines.

⁶ ARMIS 43-08, Table II, Switched Access Lines in Service.

The National UNE-P Report Card – RBOCs

State	Holding Company	UNE-P as of December 2002			National Rank		
		Gain	Lines	Share	Gain	Lines	Share
Alabama	BellSouth Corporation	41,596	110,288	5.7%	19	15	18
Arizona	Qwest	5,764	41,483	1.5%	28	32	43
Arkansas	SBC Communications	50,645	85,707	8.6%	16	20	10
California	SBC Communications	511,816	691,914	3.9%	1	4	27
Colorado	Qwest	-5,838	75,689	2.8%	42	25	31
Connecticut	SBC Communications	2,886	2,898	0.1%	32	47	49
Delaware	Verizon (Bell Atlantic)	WH	12,146	2.1%		41	36
DC	Verizon (Bell Atlantic)	WH	12,412	1.4%		40	44
Florida	BellSouth Corporation	65,565	493,891	7.5%	11	6	11
Georgia	BellSouth Corporation	68,279	395,426	9.6%	8	9	7
Idaho	Qwest	-998	10,093	1.8%	37	42	40
Illinois	SBC Communications	228,105	651,995	9.4%	3	5	8
Indiana	SBC Communications	45,686	92,817	4.0%	17	18	25
Iowa	Qwest	-26,251	76,767	6.9%	43	24	12
Kansas	SBC Communications	65,946	191,748	14.8%	10	11	4
Kentucky	BellSouth Corporation	31,020	66,634	5.4%	23	28	19
Louisiana	BellSouth Corporation	56,675	109,323	4.6%	13	16	22
Maine	Verizon (Bell Atlantic)	WH	23,991	3.4%		34	30
Maryland	Verizon (Bell Atlantic)	43,674	74,980	2.0%	18	26	37
Massachusetts	Verizon (Bell Atlantic)	37,274	100,189	2.4%	22	17	32
Michigan	SBC Communications	196,154	947,049	17.6%	6	3	2
Minnesota	Qwest	-484	85,197	3.8%	36	21	28
Mississippi	BellSouth Corporation	30,099	82,597	6.2%	24	22	16
Missouri	SBC Communications	52,564	167,970	6.6%	15	12	13
Montana	Qwest	657	5,657	1.5%	33	44	42
Nebraska	Qwest	3,940	8,027	1.8%	31	43	39
Nevada	SBC Communications	-25	26	0.0%	35	50	50
New Hampshire	Verizon (Bell Atlantic)	WH	17,507	2.3%		36	34
New Jersey	Verizon (Bell Atlantic)	330,151	405,724	6.5%	2	7	14
New Mexico	Qwest	85	5,537	0.6%	34	45	47
New York	Verizon (Bell Atlantic)	206,491	2,044,226	18.3%	4	1	1
North Carolina	BellSouth Corporation	53,749	110,720	4.4%	14	14	23
North Dakota	Qwest	-1,823	18,368	8.7%	38	35	9
Ohio	SBC Communications	200,726	399,639	9.7%	5	8	5
Oklahoma	SBC Communications	21,073	79,583	5.1%	26	23	20
Oregon	Qwest	5,344	51,869	3.7%	29	31	29
Pennsylvania	Verizon (Bell Atlantic)	67,779	379,928	6.4%	9	10	15
Rhode Island	Verizon (Bell Atlantic)	10,071	14,178	2.4%	27	39	33
South Carolina	BellSouth Corporation	25,016	64,821	4.3%	25	29	24
South Dakota	Qwest	-2,321	15,022	6.0%	41	38	17
Tennessee	BellSouth Corporation	58,980	134,636	5.0%	12	13	21
Texas	SBC Communications	105,779	1,448,241	15.0%	7	2	3
Utah	Qwest	-2,282	15,875	1.5%	40	37	41
Vermont	Verizon (Bell Atlantic)	WH	3,984	1.1%		46	45
Virginia	Verizon (Bell Atlantic)	39,628	67,266	2.0%	21	27	38
Washington	Qwest	4,615	56,252	2.3%	30	30	35
West Virginia	Verizon (Bell Atlantic)	WH	1,643	0.2%		48	48
Wisconsin	SBC Communications	41,596	88,993	4.0%	20	19	26
Wyoming	Qwest	-1,982	24,864	9.6%	39	33	6

Note: Gain is measured by the gain in UNE-P lines during last 6 months of 2002. Share is market share in RBOC territory only.

WH: Withheld due to confidentiality claim by the RBOC.

Source: RBOC Form 477 (Local Competition) Filings with the Federal Communications Commission.

The State of Local Competition in Legacy GTE Territories of Verizon

Holding Company	State	Data as of December 2002		
		ILEC End User Lines	UNE-P Lines	UNE-P Share
Verizon (formerly GTE)	California	4,567,288	1,963	0.04%
Verizon (formerly GTE)	Florida	2,269,402	3,870	0.17%
Verizon (formerly GTE)	Texas	1,647,656	6,987	0.42%
Verizon (formerly GTE)	Indiana	996,488	268	0.03%
Verizon (formerly GTE)	Ohio	954,398	849	0.09%
Verizon (formerly GTE)	Washington	893,461	2,314	0.26%
Verizon (formerly GTE)	Illinois	850,923	0	0.00%
Verizon (formerly GTE)	Michigan	780,988	1,072	0.14%
Verizon (formerly GTE)	Hawaii	723,111	4	0.00%
Verizon (formerly GTE)	Pennsylvania	680,267	1,050	0.15%
Verizon (formerly GTE)	Virginia	672,141	1,058	0.16%
Verizon (formerly GTE)	Oregon	456,744	2,986	0.65%
Verizon (formerly GTE)	Wisconsin	403,197	0	0.00%
Verizon (formerly GTE)	North Carolina	363,069	1,249	0.34%
Verizon (formerly GTE)	South Carolina	209,404	905	0.43%
Verizon (formerly GTE)	Idaho	138,452	0	0.00%
Verizon (formerly GTE)	Nevada	42,604	0	0.00%
Verizon (formerly GTE)	Arizona	8,714	0	0.00%

Source: RBOC Form 477 (Local Competition) Filings with the Federal Communications Commission.

Note: Verizon-GTE results are not included in the preceding National UNE-P Report Card because (1) the data has only been released for one period, thereby precluding the calculation of any measure (such as growth) requiring multiple observations, and (2) the competitive penetration rates are so uniformly poor that it would be misleading to draw distinctions between conditions in different states.

TAB B



August 8, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Notice of Proposed Ruling Making on TELRIC

Dear Chairman Powell,

On behalf of the Competitive Telecommunications Association ("CompTel"), I write to comment on the letter to your office dated July 29, 2003 from Congressmen Tauzin, Dingell and Upton. In that letter, the Congressmen urge you to take immediate action to address certain issues related to TELRIC, the economic pricing regime that controls the pricing of unbundled network elements. More specifically, they recommend that you promptly initiate a proceeding to reform the FCC's current pricing rules.

While CompTel adamantly disagrees with the concerns specified in the Congressmen's letter – including that the current rules discourage investment in telecommunications facilities and that the Bell Companies are not adequately compensated by the current rules for the use of their networks – we do agree and support the need to promptly open a robust inquiry into TELRIC to develop the type of detailed evidentiary record necessary to determine whether changes to the TELRIC regime are necessary. In fact, recent decisions by the Commission suggest that changed circumstances do indeed require reform of the TELRIC rules.

For example, one fundamental TELRIC premise is that the incumbents' entire full-service networks are unbundled and made available for competitive use and thus all of the investment necessary to build these full-service networks should be included in a TELRIC study. However, the Commission's decision in the Triennial Review Proceeding as outlined at its February 20 meeting indicates that the Commission has decided to limit competitive access to ILEC fiber plant and fiber-fed loops. The Commission must therefore consider whether the UNE rate for the loop should be reduced by the costs associated with the parts of the loop plant that CLECs have no federal legal authority to access or use. Indeed, if CLECs only have access to already-deployed copper loop plant, fundamental fairness and economic principles dictate that the CLECs not be charged for any capital cost associated with the ILEC deployment of a forward-looking fiber network that will be used by the ILECs to provide retail services.

Arguably, CLECs should only be charged the maintenance requirements of the legacy copper facilities to which they may be relegated.

Moreover, in fiber-fed loop situations, under federal law, CLECs may very well only have access to the “narrowband” capabilities of this plant. Thus, any charge to the CLECs for access to this plant must be less than its full forward-looking economic cost and must never exceed the cost of its functional equivalent – which may be just the maintenance costs on existing copper loops. The same economic principles dictate that, should FCC rules require ILECs only to unbundle “voice channels” on fiber distribution plant, only a small percentage of the costs of this loop plant should be allocated to the UNE. In short, since competitors no longer have full access to and use of the incumbents’ facilities, it is imperative that the Commission revise its current TELRIC rules to ensure that they are not charged as if they do.

Similarly, the TELRIC methodology adopted by the Commission in 1996 assumed that the entire capabilities of all network facilities are available as UNEs and therefore there was no need to re-allocate any of the costs associated with building a network, such as trenching, laying conduit and placing cable, away from UNEs. At that time, packet data services such as DSL and IP backbones were in their infancy in ILEC networks. Thus, the cost models and TELRIC pricing implementations of these models found it expedient to ignore those uses of ILEC full-service networks and to allow all costs of these networks to be incorporated into UNE rates. Over the past seven years, this has changed dramatically. Now, roughly 45% of all lines on the ILECs’ networks are not switched or special service lines, but are packet data lines. And while these packet data lines use the same structures, cables, loops, and wire center buildings as are used to provide UNEs, current TELRIC pricing generally requires none of the cost of the ILECs’ full-service networks to be allocated to these data services. This free ride must end; competitors should not be required to subsidize ILEC provision of data services through UNE rates. The Commission must therefore revise its TELRIC standards to ensure that an appropriate portion of total network costs are attributed to ILEC packet data services.

CompTel is also confident that development of a robust evidentiary record will conclusively disprove many of the common misperceptions about how the current TELRIC rules have actually been implemented by State Commissions. For example, when a record is compiled on whether loop plant architecture in a forward-looking model reflects, to the greatest extent possible, actual real-world topography and customer location, the Commission will discover that modern cost models do accurately account for these cost characteristics. In fact, a developed record will demonstrate that the rhetoric suggesting that current UNE prices assume that roads are not paved, mountains, rivers and other topographical hurdles do not exist, or that customers are improperly located completely ignores the sophisticated modeling that states use to set loop rates. The fact is that the current TELRIC models typically give the Bell Companies credit for *more* plant miles than they believe they actually have. Bell Company advocacy notwithstanding, State Commissions have not applied TELRIC in a way that ignores facts about the physical world, and properly presented evidence will bear that out. For these and other reasons, CompTel agrees that the Commission should promptly initiate a

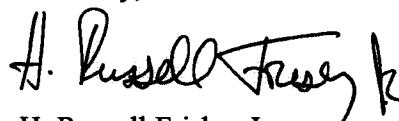
broad-based inquiry into TELRIC and that such an inquiry could be completed within a reasonably expeditious timetable.

We disagree, however, that the Commission should take any interim steps to reform or otherwise modify the manner in which TELRIC is being applied today. In particular, CompTel urges the Commission to deny and dismiss the “forbearance” petitions filed by Verizon, SBC, Qwest and BellSouth with regard to the application of TELRIC pricing rules to the UNE-P or their curious suggestion that the UNE supplier be permitted to charge IXCs access and thereby double-recover its costs. Even under the RBOC’s own theory, there is no sensible or sustainable argument that section 251 has been “fully implemented” given that these petitions were filed prior to the release and implementation of the FCC’s unbundling rules in response to the USTA Court’s decision.

Finally, the State Commissions have spent considerable time and resources reviewing cost studies and determining how to appropriately apply the FCC’s TELRIC guidance given the specific service and geographic characteristics present in their respective jurisdictions. Immediate interim changes to the TELRIC rules – without the benefit of a fully-developed record on the circumstances that may support changes to the rules – would do little but introduce confusion and uncertainty in an area where there is relative stability. A full and fair inquiry such as the one that could be conducted through a Notice of Proposed Rule Making is the appropriate way to address all issues and concerns and will serve both the industry and the public well.

Thank you for considering CompTel’s concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Russell Frisby, Jr.", with a stylized flourish at the end.

H. Russell Frisby, Jr.
President